DOCUMENT RESUME

ED 199 783 CS 503 299

AUTHOR Picard, Robert G.
TITLE Litigation Costs and Self-Censorship.
INSTITUTION Freedom of Information Center, Columbia, Mo.
REPORT NO FOI-434
PUB DATE Feb 81
NOTE 7p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Censorship; *Court Litigation; *Freedom of Speech; Journalism; *Legal Costs; Mass Media; *News Media; Newspapers; *News Reporting; Socioeconomic Influences
IDENTIFIERS *Self Regulation (Groups)

ABSTRACT

Rising litigation costs caused by lawsuits against the media and by media efforts to defend their perceived First Amendment rights are posing a threat to press freedom. In an attempt to stave off the costs of litigation, the media resort to self-censorship. In addition, pressure groups and individuals wishing to control or influence content have used fear of litigation costs to their advantage and to the disadvantage of the public. In California, for example, many newspapers and news services stopped carrying stories about the controversial rehabilitation organization Synanon for fear of becoming involved in costly court battles with that group. (Author/FL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED199783

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Paul Fisher

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
FEBRUARY, 1981

FREEDOM OF INFORMATION CENTER REPORT NO. 434

LITIGATION COSTS AND SELF-CENSORSHIP

This report was written by Robert G. Picard, a doctoral candidate at the University of Missouri School of Journalism.

The civil courts of America were once considered one of the nation's great strengths. They constituted an arena where the common man could seek remedies for wrongs allegedly committed against him and where the search for truth could be pressed. Today, however, many people view the courts differently, believing the court system to be one of the nation's weaknesses. They argue that the courts have become a place where people seek retribution or punishment of individuals who have committed wrongs — perceived or real.

Whatever the truth of the matter, it cannot be denied that Americans have come to live by the law. The number of lawsuits filed each year has risen steadily, clogging the court system, and it is now estimated that two-thirds of the world's lawyers practice in the United States.

The growth of the legal industry is posing serious problems for journalists and others in the communication industry. The number of times the media have been drawn into the courts has risen steadily, and the fees being paid for legal representation are growing each year. The result is an increasing amount of self-censorship in the communication industry.

The costs for media to defend themselves against libel, privacy, and other lawsuits have grown significantly, as have the costs for asserting First Amendment rights in the courts. Since the 1960s attorney costs have tripled and now range from $60 - $200 an hour, depending on the locality.

The media are not blameless for the rise of the litigious spirit in America. They have insisted on using courts to press their own arguments and have accepted the legal profession as an answer to many of the industry's problems.

Not only has the communication industry used lawyers for representation but it has also begun assimilating attorneys into its ranks. The number of papers and broadcasting enterprises with permanent legal staffs is growing, and those attorneys have moved into the editorial decision-making process by checking articles and making decisions on whether articles will be printed or not.

The problems of rising legal costs are serious. There is growing evidence that the costs of litigation are causing many publishers and broadcasters to censor themselves in order to avoid the financial burdens caused by lawsuits about content. There also is evidence that some media acquiesce to actions that trample privileges accorded by society rather than spend the money required to defend those rights.

Floyd Abrams, of the New York law firm Cahill, Gordon, and Reindel, recently warned that litigation costs can cause serious freedom of the press problems. "...If things develop to the point where large jury verdicts or large counsel fees on a yearly basis are the norm and not the exception, then I don't have any doubt that publications will be obliged to trim their sails. . . .The real danger is that the public would never know," he said.[1]

There is significant evidence that Abrams' warning is becoming true and that newspapers, broadcasters, and news services are giving into pressures and demands regarding their content to avoid litigation and representation costs. This self-censorship obviously poses a danger to freedom of information because it deprives the public of information that might be necessary, useful or enlightening to them.

The Litigious Spirit Grows

The litigation cost pressures on the media have been increasing, especially in the past two decades. When media were challenged in the past, courts traditionally ruled in favor of the media, except in cases of gross misconduct or special circumstances regarding press rights. Usually the cases were ended quickly and without large litigation costs.

At the same time, the number of lawsuits against the press was relatively low, as was the total number of lawsuits filed in the country. Today, however, a litigious spirit has overcome the nation, and the media have not escaped its results.

The press has become a target for a number of reasons. Observers point out that the pervasiveness of the media, changes in the newsworthiness of institutions and individuals, and changes in the style and types of reporting have brought information forward that might not have been disseminated in years past. As a result, the number of people that have been the subject of media attention has grown, and the number of people who feel they have been treated unsatisfactorily has increased.

Summary: Rising litigation costs caused by lawsuits against the media and by media efforts to defend their perceived First Amendment rights are posing a threat to press freedom. In an attempt to stave off the costs of litigation, the media resort to self-censorship. In addition, pressure groups and individuals wishing to control or influence content have used fear of litigation costs to their advantage and to the disadvantage of the public.

CS503297

One writer has pointed out that "journalists today must be more careful than ever with small details. The country is in a litigious mood — everybody sues these days, and even if there are not real grounds, suits are expensive to defend."[2]

Libel victories by plaintiffs may have increased the number of libel suits because, as some observers believe, the high damages awarded have been an incentive for many individuals to pursue a libel suit.

The number of suits not settled or ended by the courts before trial has also increased. The denial of summary judgments in pretrial hearings has forced the media to spend more money on defenses, even though many of the cases are ultimately won after jury trials. It is asserted that defendants in libel suits have their legal costs doubled if the matter is not ended with a summary judgment, and a footnote to **Hutchinson v. Proxmire** by Supreme Court Chief Justice Warren Burger has given plaintiffs an edge in staving off summary judgment motions.[3]

One publication has noted that the footnote very quickly resulted in increased costs for media. "The **Los Angeles Times** and several Gannett papers, among others, have found themselves on trial in cases thought by their lawyers to be groundless," it reported. "With attorneys' fees averaging $1,000 a day, publications are spending fortunes to battle suits that previously would have been dismissed before trial."[4]

The communication industry adds to its legal costs by initiating litigation to press for rights in the courts. Part of the litigation is a response to challenges of media actions by the government, challenges that rarely occurred before recent decades. Other litigation occurs because of media challenges of actions by government, an outgrowth of the adversary role that the media have adopted now as never before.

During the **Pentagon Papers** litigation, for instance, the New York **Times** and Washington **Post** together paid nearly $300,000 in legal fees to fight the prior restraint efforts of the government and to prepare a defense in case criminal indictments were handed down against the papers or their journalists.

The attempts of the newspapers to publish the Pentagon study represented a different kind of journalism than had been carried out by newspapers previously, and the newspapers paid the cost of pursuing the right to carry on that kind of journalism. Some of the legal costs paid by media today, however, make the amount paid by the **Times** and the **Post** appear small.

Litigation Costs Rise

The costs for communication organizations to defend libel suits and threats of libel suits have risen to the point that many news organizations have begun settling cases out of court to avoid more expensive defenses and the possiblity of large jury verdicts. They have also begun to alter content to avoid litigation, even when the content is accurate and in the public interest.

Recent press skirmishes with the controversial rehabilitation organization Synanon underscore the fears of litigation costs.

The San Francisco **Examiner**, for instance, sought to reduce its potential costs by settling a $32 million libel suit for $600,000 and then settling a second suit for alleged damages to Synanon during the first suit by paying $2 million more.

The National News Council recently turned its attention to Synanon activities after United Press International filed a complaint against the group. The complaint rose out of organized efforts by Synanon to threaten news organizations with libel suits beginning in October 1978, the same month a Los Angeles attorney was bitten by a rattlesnake placed in his mailbox by Synanon members.

During the Synanon "retraction project," the group sent out nearly 1,000 letters demanding corrections and retractions of nearly every story carried about the group to news services, publishers, and broadcasters operating or distributing news within California. The largest single number of letters was sent in May 1979, the month after the weekly Point Reyes (Calif.) **Light** won the Pulitzer Prize for its coverage of the organization.

The Synanon letters cited Section 48a of the California Civil Code and demanded retractions or corrections. The section was originally designed to give publishers and broadcasters the option of printing corrections as evidence they had good faith in printing the original story should a libel suit be pursued.

Although Synanon denied using the letters as threats or harassment, most editors and publishers accepted them as threats or retaliation for the negative coverage the group had received as a result of the rattlesnake incident and the Pulitzer Prize. A significant number of them chose not to risk a legal battle with the group.

In preparing for the National News Council complaint, UPI attorney Bruce W. Sanford reported to UPI Vice President and Editor in Chief H.L. Stevenson that some UPI subscribers had honored Synanon's requests.

"...One or two small publishers carried wholly inappropriate 'apologies' or 'corrections' or reprinted Synanon's statements out of a misguided sense of 'equal time.' Inevitably, too, many editors began to refrain from using any wire stories about Synanon out of a fear of litigation or a belief that 'it just wasn't worth risking a lawsuit,' " he wrote.[5]

But Sanford only reported a small portion of the problem. It was much more extensive.

A small California news service drew Synanon's interest for carrying a column about a Superior Court hearing involving the group. Although the rehabilitation group did not challenge the accuracy of the report, they argued that it was libelous because it portrayed them in a poor light. Synanon demanded retractions by each of Capital News Service's subscribers that carried the column, and from the news service itself.

A California journalism review noted, "The news service originally intended to stand by its columnist but decided to avoid a protracted and expensive legal battle after its subscribers, mostly small publications, refused to support the efforts financially. 'Papers did not stand up to assist,' said Bob Davidson, CNS Sacramento bureau chief."[6]

Fred Kline, owner and editor of the news service later told the National News Council that about a quarter of his subscribers refused to publish any stories about Synanon after the incident. "They can't afford lawsuits. Their liability insurance for the most part calls for them to pay the first $7,500, and that's a lot of money for a small paper."[7]

J. Hart Clinton, publisher of the 45,000 combined-circulation San Mateo **Times and News Leader** told the news council that he had twice run retractions involving Syananon stories and was trying to avoid any further involvement with the group. "I have instructed my newsroom not to publish any more material on Synanon unless it is extremely important, and we know it is accurate. I don't want to be harassed," he said.[8]

The National News Council concluded its report on the problem by indicating Synanon was within the law when it

made its demands.

"It is clear that Synanon is using a law presumably passed to protect publishers and broadcasters. . .as a weapon for coercing the press into silence about Synanon and its affairs," the council said. "It is also clear that, as a result of the legal harassment, many editors and news directors, especially those associated with small news organizations of limited resources, are refraining from publishing or broadcasting news they deem legitimate affecting Synanon."[9]

The council could not, however, offer any solution to the problem except to urge the media to be courageous in standing up to the pressure.

The amount of money spent by news organizations consulting with attorneys about the Synanon retraction requests is unclear, but if the 1,000 letters sent by Synanon resulted in only one hour of consulation with counsel each, a conservative estimate of $100,000 can be made.

That figure, however, in no way compares to the $1.9 million Time, Inc. spent fighting a Synanon lawsuit over a 1977 article. The suit ended in 1980 when Syananon requested that it be dismissed, but Time filed a motion seeking recovery of its litigation costs. Time told the National News Council that its attempt to recover the costs "could be a healthy deterrent to future suits of this kind."[10] While some who would pressure the media may reconsider if the motion is granted, few media have the financial strength to sustain the high litigation costs that Time has borne in the process.

Defense costs of libel suits involving other parties have also resulted in high expenditures. Litigation costs of nearly $100,000 were recently encountered by Palm Beach, Fla., and Baton Rouge, La., newspapers when they lost and appealed sizable libel cases. Although both won their cases on appeal, they still had to bear the costs of their defenses.

Jim Hughes, executive editor of the 116,000 combined-circulation **Morning Advocate** and **State Times** in Baton Rouge, admits the cost of litigation now enters editorial decisions at his paper. "I have to ask myself sometimes, is this story worth $30,000 in attorney's fees?"[11]

Another example of how litigation costs can be financially damaging involves a pending suit by consumerist Ralph Nader against syndicated columnist Ralph de Toledano. In a column carried by Copley News Service, de Toledano noted that Nader had joined forces wih Sen. Abraham Ribicoff to fight nuclear power. De Toledano reported that the two had previously been adversaries and that Ribicoff had devoted 250 columns of the **Congressional Record** to demonstrate that Nader "falsified and distorted evidence to make his case against (the Corvair)."[12]

The million dollar libel suit was filed against de Toledano and the news service in 1975, and de Toledano has been trying unsuccessfully to get it thrown out of court since that time. Although many attorneys acquainted with the suit believe Nader cannot win the case, it has been lingering in the courts for five years and has cost the columnist $25,000 of his own money so far.

Nat Hentoff reports that de Toledano "has been living on savings for the past three years, and calculates that he may have to go on welfare in two more years" as a result of the suit.[13]

More importantly, says Hentoff, de Toledano has been gagged because of the lawsuit. He has "lost part of his right to free expression — at least until the case is over. When, in one column a while ago, de Toledano simply quoted Nader — without any comment at all — that column was killed by his syndicate. . . .There's nothing like a pending libel suit to freeze speech," says Hentoff.[14]

"A small publication can be bled out of existence by a libel suit; and an essentially freelance journalist, as de Toledano has most unwillingly demonstrated, can lose just about everything he — and his family — have," Hentoff warns.[15]

A libel suit brought against the San Francisco **Examiner** by two policemen and a prosecuting attorney also points out the problem of litigation costs. The case involved a story alleging a police frame-up against a member of a youth gang.

The story was written by Lowell Bergman, a freelance reporter, and Raul Ramirez, a member of the **Examiner** staff. When the suit was filed, the **Examiner** chose to cut its litigation costs by refusing to defend Bergman and blaming the alleged libel on him. As a result Ramirez joined Bergman in seeking separate counsel because he felt the paper was not looking after his interests either.

A defense committee, composed of sympathetic colleagues, raised $20,000 to help pay the reporters' legal bills for the 1979 trial. A finding against the reporters in that trial is now being appealed, and their costs will rise accordingly, as will costs for the **Examiner**, which also lost its case.

John K. Zollinger, publisher of the 10,000-circulation Gallup (N.M.) **Independent**, points out the extent of litigation costs for papers such as his. "We're spending almost two percent of our net profit on legal. It's no joke anymore. . .you win and you still pay."[16]

In addition to the litigation costs posed by libel, privacy and other suits, the media face significant costs when they attempt to defend press rights and privileges that they feel have been trampled.

The recent battle over the federal government's attempt to restrain publication of **The Progressive** magazine's issue dealing with the H-bomb and how it works, struck a serious blow to the publication's finances.

The Progressive, a 40,000-circulation magazine that has been losing about $100,000 a year, spent nearly $250,000 defending itself against prior restraint. The magazine and its supporters have been trying to raise the funds to cover the defense costs and so far have managed to pay all but $60,000 of the expenses because of contributions from subscribers and organizations interested in the case.

"Our lawyers said at the outset this was likely to be a protracted and horrendously expensive case that could jeopardize the survival of the magazine," says editor Erwin Knoll. "But we knew we would go ahead with the case because that's the way **Progressive** has always operated."[17]

The 35,000-circulation **Oregon Magazine** also incurred legal costs when the Central Intelligence Agency recently attempted to block publication of portions of a humorous article, "I Was Idi Amin's Basketball Czar," by Jay Mullen, a former CIA agent.

"We were taken aback when the CIA got involved because there was nothing in the article that could be remotely considered dangerous to security," says associate publisher Richard Weisberg.[18]

The article was routinely submitted to the CIA by Mullen — as directed by a secrecy agreement he had signed — and the agency demanded that portions of the article be deleted for security reasons. Finally, after unsuccessful negotiations with the CIA the magazine instituted and lost efforts to gain a court order restraining the intelligence agency from interfering with publication of the article.

"That cost us between $3,000 and $4,000 in legal fees," Weisberg says, "and our attorneys warned us that if we pursued a full case against the CIA it could cost at least $40,000."[19] Finally, the magazine defied the agency's demands and published the story without approval, although it

did delete some material itself.

Although prior restraint cases are not frequent, they pose significant legal problems for publications attempting to expose government activities that officials would prefer not be revealed.

Many thousands of dollars have also been spent on legal defenses of reporters jailed for refusing to reveal sources and for media efforts to ensure access to the nation's courts.

The 1976 Supreme Court ruling against gag orders in **Nebraska Press Association v. Stuart** cost the association about $100,000.

The recent Supreme Court ruling limiting closed trials was also an expensive victory. **Richmond Newspapers Inc.**, which pursued the case after a Virginia judge closed a murder trial in which the defendant was subsequently acquitted, does not yet know the full costs of the litigation. But Publisher J. Steward Bryan III believes it will be between $75,000 and $100,000.

"We certainly thought about the cost, and we discussed it with our Richmond counsel" before pursuing the case, Bryan admits. But the cost was not the foremost concern in making the decision, he says.[20]

Even so, Bryan believes few newspapers could take on such a case. "I don't think there are many newspaper companies who could afford this kind of case. Even daily newspapers beween 20,000 and 25,000 circulation couldn't possibly afford it."[21]

Richmond Newspapers pursued the case without financial assistance from other organizations, but Bryan said the firm did not pursue the case for the notoriety.

"We are not interested in being known as a leader in free press battles," he said. "Our paper has been well regarded for some time so we didn't pursue the case for that reason. We took it because it presented itself and was worth fighting."[22]

Other kinds of legal pressures are also increasing litigation costs for media.

In Hollywood two types of suits against film producers and networks are becoming common. The first asserts that an idea for a production was stolen from an individual, and the second contends a production was defamatory to the plaintiff. "Filing lawsuits seems to be as popular a pastime in filmdom as playing tennis," says one observer.[23]

Those kinds of suits are obviously unpopular with the media, which must defend against them because even the simplest case may cause legal fees of $10,000, and a case that is appealed or otherwise prolonged may cost $50,000 or more. As a result many firms are attempting to "pay off" plaintiffs whether or not their claims are valid.

Those settlements may reduce costs in the individual cases, but some observers believe they actually increase litigation costs because they may be encouraging people to file suits in hopes of receiving settlements rather than jury verdicts.

Challenges to broadcast licenses and the filing of complaints with the Federal Communication Commission by pressure groups have also cost broadcasters significant amounts in legal fees.

With Washington lawyers costing $150 - $200 an hour, even the simplest challenge requiring representation before the FCC can cost a broadcaster $50,000 - $100,000.

Few broadcast license challenges have proved successful, so most pressure groups are now exerting pressure on broadcast sponsors, but many license challenges are being made to force changes in station policy rather than to force the licensee out of the business. Broadcasters, who must pay large fees to defend against the challenges, are often saddled with the challengers' legal costs when they come to an agreement that halts the challenge.

The owners of WEFM-FM in Chicago, for instance, settled a challenge by the Citizens Committee to Save WEFM by agreeing to meet some of the group's demands and to pay $60,000 in legal bills incurred during the group's efforts to stop a format change from classical to popular music.[24]

When two companies competed for a new radio station in Flint, Mich., they entered an agreement acceptable to the FCC that allowed Flint Metro Mass Media, Inc., the ultimate winner of the license, to reimburse Flint Family Radio, Inc. $50,000 in exchange for withdrawing its application.[25]

Such cases are not uncommon, and it is not surprising that broadcasters attempt to settle disputes at a relatively early stage by offering to pay challengers' legal fees as part of a deal. Should no settlements be reached and the case become a lengthy battle involving multiple hearings before the FCC and court appeals, the litigation costs to the station could rise above $1 million.

The profits that are lost by broadcasters, publishers, and other media firms to legal costs are a real concern to their owners. One observer has noted that even large companies able to bear the legal costs are worried because many are owned by corporations interested in profits, stockholder earnings and Wall Street performance.[26]

Self-Censorship in Media

The result of rising litigation costs has been clearly seen by observers of the communication industry. Self-censorship to avoid litigation seems to have become the norm, and stories likely to produce high legal costs aren't being reported or are being modified and cleared with media lawyers.

Richard Schmidt, general counsel of the American Society of Newspaper Editors, noted in 1976 that "a subtle but pervasive attitude of self-censorship motivated by fear of libel suits has developed among publishers."

"I can judge by the calls that come into my office that many newspaper editors and publishers are just not running as freely as they did," he said (St. Louis **Post-Dispatch**, 10-13-76).

Schmidt still believes that the litigious climate is making some publishers exercise self-censorship. "Self-censorship is rather prevalent, but it can't be proved with empirical evidence. It's something publishers don't like to talk about, but I hear about it in conversations at meetings and conferences all the time."[27]

UPI attorney Bruce Sanford, a former **Wall Street Journal** reporter, observed this year, "There's a lot of self-censorship by editors unwilling to rock the boat. They fear the heavy court costs that could come from a tough investigative article.[28]

The magazine **New Jersey Monthly** has been engaged in such an expensive legal battle since it published an article criticizing the awarding of a gambling license to Resorts International. According to magazine officials, 10 percent of the editorial budget is now being spent on legal fees.

"If these suits keep up, advocacy journalism of any kind will be dead," says editor Chris Leach."[29]

Attorney Sanford says it is difficult to prove that editors and publishers are intimidated, but he believes many stories are not being pursued because of possible litigation costs. "Someone will say, 'Let's not explore that hornet's

nest.' Another will claim, 'We don't have the resources to go after that one.' You'll still get some 'damn-the-torpedoes' publishers, but others, when faced with (choosing between) either a tough investigative piece that could be libelous, or a softer feature story, will grab for the feature."[30]

"Self-censorship has always been the most pervasive form of censorship," says Erwin Knoll, editor of **The Progressive**. "Keeping out of trouble has always been publishers' main interest."

"If we were still bearing the $60,000 debt from the last go around. . . and knowing fully the burdens of pursuing such a case (as the H-bomb issue sparked) we would do it again. But we would do it with the knowledge that the magazine would not be likely to survive," he says. Nevertheless, he believes few small publishers or publications with circulations the size of his would elect to pursue such an expensive course. "I think the cost has a chilling effect to say the least."[31]

Dan Paul, attorney for the Miami **Herald**, notes "costs of trying libel suits, contesting gag orders, quashing subpoenas, fending off privacy actions, and obtaining news under freedom of information laws are already substantial, and the burden is growing. . . .Because of this burden the hometown newspaper or small radio station may decide to steer clear of news prone to generate litigation costs or search warrants. That is chilling."[32]

Small news organizations understandably fear the increased expenses of legal defenses because their economies are usually strained paying the costs of newsgathering, production and distribution. The threat of a suit or the possiblity that they may have to defend their rights are enough to make them back away from any story or action that may be contestable.

The same is true of producers of non-news materials in the media. "Because of fear of litigation, writers and producers may end up stifling their creativity. It will be terrible when lawyers become the arbiters of what is to be the content of television programs and movies," one observer has noted.[33]

Avoiding litigation by self-censorship adds a raw economic factor to an industry that has claimed to be guided by the interests of society and ethical principles.

It is an unfortunate reality that there can be no appeal from this kind of censorship because it is instituted by the media themselves and is usually unseen and undetected by their audiences.

The Trend Will Continue

The problem of litigation costs and the growing costs of defending press freedoms will undoubtedly exist as long as the litigious spirit remains alive in the United States. In the meantime, defense costs can only be expected to rise and more self-censorship seems inevitable.

"As legal costs go up and legal complications grow ever more ramiferous and Byzantine, publishers may increasingly try to avoid those types of difficulties," warns **Progressive**'s Erwin Knoll.[34]

Efforts to increase the number of summary judgments in lawsuits against the media may be helpful, as well as efforts to seek non-judicial mediation of conflicts or legislative solutions to some of the problems.

Editor and Publisher has suggested that newspapers and journalism organizations may have to seek legislative relief for some factors in the problem. "We see nothing wrong in asking Congress, and state legislatures as well, to reaffirm the meaning of the First Amendment," the magazine's editors said.[35]

Others have suggested making attempts to persuade a foundation to make more First Amendment defenses one of its prime purposes.[36]

ASNE attorney Richard Schmidt believes the legal industry will help with some of the problems in the future. "Somewhere down the line there will be a review of the whole terrible costs of litigation in all fields," he says. Those efforts are likely to bring about limitations on the scope of discovery proceedings and may explore the possibility of assessing fees and costs to losing parties in lawsuits, Schmidt says.[37]

Some observers believe chain ownership and large media corporations may be helpful because their size gives the strength needed to withstand the pressures of litigation costs and threats of litigation posed by those wishing to control or influence media content.

The rising popularity of libel and First Amendment insurance policies may also help some media.

About half of the 1,750 daily papers and 425 weekly papers in the United States now carry libel insurance, but deductibles of up to $25,000 can pose problems because some cases are settled or ended at costs below that deductible level.

Kansas City Employers Reinsurance Corp., which claims to insure more media clients than any other company, says libel insurance is gaining popularity and that the number of its policies has tripled in recent years.

The interest in libel insurance has also brought about the establishment of First Amendment insurance, which aids in pursuing or defending cases involving First Amendment issues. About 300 companies, mostly daily newspapers, have purchased policies from the Mutual Insurance Company in coverages ranging from $100,000 to $1 million.

"It will allow smaller papers to be able to pursue freedom of the press cases when there was no chance that they could do it before," says J. Steward Bryan III, of Richmond Newspapers.[38]

Some observers, however, are not so optimistic. They believe both libel and First Amendment insurance policies are not the answer for small media organizations because they expect a rising number of claims will increase the costs of insurance premiums in the years to come, and small media organizations cannot — or will not — afford the costs of coverage.

Despite the efforts being made or suggested to combat litigation costs and the resulting self-censorship, the future of attorneys in the communication industry looks promising. Owners and managers seem committed to seeking legal relief from problems in the media and are beginning to fund organizations that will pursue legal cases on their behalf.

The increasing development of cable, satellite and other new information delivery systems is also expected to multiply demands for communications lawyers. As their audiences and programming increase, the new media can expect to face libel, privacy and other suits, as well as challenges citing FCC and anti-trust regulations.

In addition, the media seem content to use attorneys in a variety of capacities within the industry itself and seem to have fallen victim to the old Mexican curse, "May your life be filled with lawyers."

Self-censorship and acquiescence to some First Amendment challenges will probably remain the norm, particularly in small media organizations, despite efforts of media lawyers to battle those threats. If larger, more financially secure media provide assistance throughout the industry,

that trend may decline, but indications are that it will continue for some time.

But dependence on the legal profession is viewed as an unhealthy trend by some observers. Some fear the continual excursions of media into courtrooms may lead to a loss of public esteem for the media because the public may come to view the media as radicals or ungracious misanthropes. It is also suggested that continually entering the courts provides opportunities for rulings unfavorable to the press.

Some journalists have heightened the problem by becoming "First Amendment junkies," who react by seeking legal relief whenever they feel press rights have been infringed, says Don Reubens, an attorney who has represented the Chicago **Tribune**, the New York **Daily News**, and Time, Inc. Reubens recently warned journalists attending a Northern Illinois Newspaper Association meeting that such a "knee-jerk reaction" allows bad cases to be brought to courts and that such cases can bring unfavorable rulings costing fellow journalists existing freedoms.

It is ridiculous for journalists to seek confrontations or test cases that have no real importance or that could be counterproductive, Reubens said.

In the past, legal remedies were sought as a last resort by media firms. Now those same firms seem committed to battling in the legal arenas of America, rather than seeking other ways of overcoming their problems. The media seem to have been taken in by the litigious spirit in the nation and are contributing to it by taking attorneys into their employ and using them for the media's own purposes.

Whether the media will be able to break loose of the bonds of litigation costs, self-imposed censorship and the legal industry remains to be seen, but few efforts by the media seem directed at those goals.

FOOTNOTES

1. C. David Rambo, "Special Report: Libel," **Presstime**, 2 November 1980, p. 5.
2. Art Spikol, "The Libel Belt," **Writer's Digest**, August 1979, p. 8.
3. James J. Cramer, "Acts of Malice?," **Columbia Journalism Review**, July/August 1980, p. 17.
4. **Ibid.**
5. "National News Council Report: UPI Charges Synanon with Harassment," **Columbia Journalism Review**, January/February 1980, p. 75.
6. Robert G. Picard, "The Easy Way Out," **Feed/Back**, Spring 1980, p. 13.
7. "National News Council Report: Council Studies Synanon 'Retraction Project,'" **Columbia Journalism Review**, May/June 1980, p. 94.
8. **Ibid.**
9. **Ibid.**, p. 100.
10. **Ibid.**, p. 91.
11. Paul J. Levine, "Libel 'victory' is expensive," **Editor and Publisher**, 4 November 1978, p. 36.
12. Nat Hentoff, "Is it Libel or Blasphemy to 'Defame' a Saint," **Village Voice**, 14 April 1980, p. 8.
13. Nat Hentoff, "Nader v. de Tolendano: The Anatomy of a Malignant Libel Suit," **Village Voice**, 7 April 1980, p. 20.
14. **Ibid.**
15. **Ibid.**, p. 21.
16. Rambo, p. 5.
17. Telephone interview with Erwin Knoll, 6 January 1981.
18. Telephone interview with Richard Weisberg, 6 January 1981.
19. **Ibid.**
20. Telephone interview with J. Steward Bryan III, 21 October 1980.
21. **Ibid.**
22. **Ibid.**
23. Ellen Torgerson, "May Your Life Be Filled With Lawyers," **TV Guide**, 31 March 1979, p. 14.
24. "Corruption of the System," **Broadcasting**, 9 January 1978, p. 74.
25. "FM Assignment in Flint, Mich., Goes to Black Group," **Broadcasting**, 7 May 1979, p. 58.
26. Dan Paul, "Litigation costs growing threat to free press," **Editor and Publisher**, 15 July 1978, p. 22.
27. Telephone interview with Richard Schmidt, 7 January 1981.
28. Cramer, p. 17.
29. **Ibid.**, p. 18.
30. **Ibid.**
31. Telephone interview.
32. Paul, p. 22.
33. Torgerson, p. 17.
34. Telephone interview.
35. "Economic Self Censorship," **Editor and Publisher**, 11 November 1978, p. 6.
36. Paul, p. 22.
37. Telephone interview.
38. Telephone interview.